



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Bureau of Indian Affairs Questions on Avoiding
Trust Account Overdrafts

Matter of:

File: B-219235

Date: March 23, 1988

DIGESTS

1. The Bureau of Indian Affairs (BIA) practice of disbursing to a proper payee before collecting amounts due from an erroneous payee, may result in an overdraft of an Individual Trust Account. Under these circumstances, BIA may avoid an overdraft by using funds from its Operation of Indian Programs appropriations to correct the erroneous payment from the Individual Trust Account.

2. A Bureau of Indian Affairs accountable officer is personally liable for making erroneous payments from an Individual Trust Account. Making a corrective payment from Operation of Indian Programs funds does not remove the liability for the original erroneous payment, but it does not create additional liability for the accountable officer making the corrective payment. The first accountable officer's liability for the erroneous payment can only be extinguished by recovering the amount paid out or by a grant of relief from the appropriate authority.

DECISION

This decision responds to a request from the Bureau of Indian Affairs (BIA) concerning the propriety of certain suggested accounting practices in light of our recent holding in Bureau of Indian Affairs Questions on Payment to Indians, 65 Comp. Gen. 533 (1986). BIA also asks about the liability of, and need to request relief for, the accountable officers making erroneous and corrective payments. For the reasons explained below, we conclude (1) that the procedures suggested by BIA are proper, and (2) that relief is required for the officer making the original erroneous payment, but not for the officer making the corrective payment.

BACKGROUND

The BIA wishes to contract with a private financial institution for "collection, accounting, investment,

041645-135371

disbursement and custodial services for funds held in trust for Indian individuals and tribes and others."1/ In so doing, the BIA seeks to avoid the possibility of a trust account being subject to overdraft through erroneous and corrective payments.

An individual trust account occasionally receives payments from the BIA to which it was not entitled. See, e.g., 65 Comp. Gen. 553, supra, involving a probate payment to the wrong beneficiary. If the amount of the erroneous payment has not been withdrawn at the time the error is discovered, the BIA can simply transfer the payment to the rightful recipient through an accounting adjustment. If the trust account beneficiary has withdrawn the amount of the erroneous payment before the error is discovered, however, there may be insufficient funds remaining in the account to make the corrective payment. The BIA is under a duty to make prompt corrective payments and cannot wait to obtain restitution from the wrongful recipient. This resulted in the past in an overdraft of the account--a practice which BIA says will be unacceptable to any private banking institution with which it may contract.

To avoid this prospect, the BIA wants to adopt a procedure under which it can shift funds from the Operation of Indian Programs (OIP) appropriation account to the appropriate individual Indian Service Special Disbursing Agency (ISSDA) account instead. We allowed a similar use of OIP funds in 65 Comp. Gen. 533, supra.

DISCUSSION

In 65 Comp. Gen. 553, a BIA accountable officer sought to correct an earlier erroneous probate payment by making a corrective payment to the rightful beneficiary. Questions arose over the source of the funds to be used and the liability of the accountable officer for making the corrective payment. Specifically, we were asked whether the accountable officer was required to overdraw funds from the trust account that had received the original erroneous probate payments and whether doing so would mean that he was personally liable for the amount of the overdraft. We determined that the corrective payment should be made from funds currently available to the BIA from the OIP appropriation rather than to overdraw the trust fund. Further, we concluded that because OIP funds are an appropriate source to cover this type of shortfall in an individual ISSDA

1/ BIA does not seek, nor do we extend at this time, an opinion on the propriety of turning over these functions to a private institution.

account, the corrective payment would not be improper and therefore there would be no need to obtain relief for the accountable officer making the payment.

The officer making the original erroneous payment is, however, personally liable for that error, unless relieved. We have described the liability of accountable officers as follows:

"An accountable officer is automatically liable at the moment . . . an erroneous payment is made. If . . . the erroneous payment cannot be recovered from the recipient thereof, consideration is given to relief of the accountable officer upon proper administrative requests. Relief is granted by our Office unless it is determined that the accountable officer was negligent or guilty of bad faith or lack of due care, and that such negligence, bad faith, or lack of due care was the proximate cause of the physical loss or erroneous payment." Personal Accountability of Accountable Officers, 54 Comp. Gen. 112, 114 (1974).

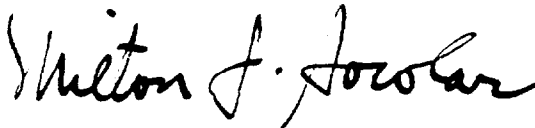
These principles of liability in no way conflict with our holding in 65 Comp. Gen. 533. The actions of the accountable officer making the corrective payment and the accountable officer making the initial erroneous payment are distinct and separate transactions. The corrective payment only "corrects" the erroneous payment from the point of view of the proper recipient, not the government. The initial erroneous payment stands on its own and is treated in the same fashion as any other erroneous payment under the principles described in 54 Comp. Gen. 112.

CONCLUSION

The procedure suggested by the BIA to avoid trust account overdraft is satisfactory and consistent with 65 Comp. Gen. 533. While it is not possible to say that Operation of Indian Programs funds would be the proper source from which to make corrective payments in every case, it appears to be appropriate for most situations. The test for using any source of funds for corrective payments is whether those funds are available for the activity requiring the corrective payment at the time the government's liability for such payment becomes fixed.

The accountable officer making a corrective payment has no personal liability for that amount since that payment is not considered improper. However, personal liability attaches

to the accountable officer making the initial erroneous payment. When appropriate, relief for that officer may be sought from this Office.

for 
Comptroller General
of the United States